

APR 1 2000

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

Walt Roberts
Walt Roberts for Congress
Gene Stipe, *et al*

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) MUR 4818
) MUR 4933
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GENERAL COUNSEL'S REPORT #2

I. **ACTIONS RECOMMENDED:** Approve subpoenas for depositions and documents and approve additional reason-to-believe findings

II. **BACKGROUND**

MUR 4818 involves financial transactions related to Walt Roberts' 1998 campaign for Oklahoma's 3rd Congressional District. This report addresses various transactions: (i) a \$67,500 candidate loan, purportedly from "personal funds" that was allegedly financed through a cattle sale; (ii) the alleged sale of candidate-made sculptures at an auction; (iii) loans of \$35,500 and \$17,000 reportedly from the candidate; (iv) contributions reportedly from employees of the Stipe Law Firm that were reimbursed with funds belonging to Roberts' mentor, Oklahoma State Senator Gene Stipe; (v) Gene Stipe's payment of personal expenses of the candidate during the election year, totaling almost \$38,000, and; (vi) a \$55,000 payment by Walt Roberts through his business account that counsel has informed this Office was for a media expense but that was never put in the campaign account or disclosed on public reports.

¹ The transactions numbered (v) and (vi) were only discovered in response to the Commission's Subpoenas and Orders and to follow-up questions by this Office. Therefore, no findings have been made regarding such transactions.

On October 15, 1999, the Commission found reason to believe that Walt Roberts, Walt Roberts for Congress and Chris Clark, as treasurer, knowingly and willfully violated 2 U.S.C. § 441a(f) and § 441f, that Walt Roberts for Congress and Chris Clark, as treasurer, knowingly and willfully violated 2 U.S.C. § 434(b) and that Walt Roberts for Congress and Chris Clark, as treasurer, violated 2 U.S.C. § 434(a)(6)(A), that Gene Stipe and the Stipe Law Firm knowingly and willfully violated 2 U.S.C. §§ 441f and 441a(a)(1)(A); that Ginger Barnes, Jamie Benson, Shelly Dusenberry, Gloria Ervin, Cynthia Montgomery, Dana Thetford, Deborah Turner and Charlene Spears violated 2 U.S.C. § 441f.

MUR 4933 involves a \$50,000 candidate loan which was derived from McAlester Industrial Credit Corporation. On October 15, 1999, the Commission found reason to believe that Walt Roberts, Walt Roberts for Congress and Chris Clark, as treasurer, knowingly and willfully violated 2 U.S.C. § 441b(a), and that McAlester Industrial Credit Corporation, Incorporated and W.H. Layden, as President, violated 2 U.S.C. § 441b(a).

The Commission issued Subpoenas and Orders in both MUR 4818 and 4933. The initial responses were not complete, and numerous follow-up requests were made over a several month period. As explained below, given the many questions raised by the responses, this Office has concluded that live testimony through depositions will be necessary, along with additional subpoenas for documents.

III. SUMMARY OF RESPONSES

A. MUR 4818

(i) \$67,500 "cattle loan"

Walt Roberts for Congress ("Roberts" campaign" or "Committee") reported receiving a \$67,500 loan from the candidate's personal funds on August 5, 1998. Five days later, on August

10, 1998, the Committee transferred by wire a \$67,500 payment to LUC Media, a subcontractor to Strother, Duffy & Strother for a media purchase.

In his responses, Walt Roberts acknowledges that the \$67,500 came from State Senator Gene Stipe.² Roberts avers that on or about August 1, 1998, he and Stipe agreed that Roberts "would sell a load of cattle" to Stipe. Attachment 1 at page 4. The cattle allegedly consisted of "68 heads approximately." *Id.* It is claimed, however, that sometime after giving Roberts the \$67,500, Stipe "discovered that the cattle were not acceptable for his operation." Attachment 1 at page 4. Roberts thus returned the money to Stipe on September 23, 1998. Attachment 1 at page 26. After this Office sought further information required by the Subpoena and Order about Roberts' ownership of the cattle, Roberts stated that he did not actually own the 68 head of cattle which Mr. Stipe allegedly purchased. In a follow up response, Roberts referred to it as a "proposed sale" and that Roberts "never completed the purchase of the cattle." Attachment 1 at page 15. Thus, Roberts appears to be asserting that he was simply going to arrange the sale or act as a broker. Roberts did not identify the alleged owner of the cattle. Roberts indicated that he did not have any documents related to the alleged cattle sale other than the check from Stipe, his check to the campaign, the refund check to Stipe and the corresponding bank statements. *Id.*

Mr. Stipe avers that he made the payment to Mr. Roberts on August 5, 1998, but that after he "discovered that these were longhorn cattle, and therefore not usable on my ranch," he requested a refund. Attachment 3 at page 2. Mr. Stipe's sworn response does not indicate whether he was aware that Mr. Roberts did not actually own the cattle. In a follow up response,

² According to press accounts, during the campaign Roberts denied that the funds came from Gene Stipe. See First General Counsel's Report, dated September 23, 1999, ("FGCR") at page 7 citing Complaint at Exhibit 5.

Stipe avers that Jim Lane, "a close friend" and former State legislator, inspected the cattle on Stipe's behalf. Attachment 3 at page 11. Jim Lane appears to be the person who determined that the cattle were not the kind that Stipe wished to purchase.³ Mr. Stipe also claims that he had no discussion with Mr. Roberts about using the proceeds of the sale of the cattle for Roberts' congressional campaign. *Id.* at page 2. Like Roberts, Stipe claims not to have any documents related to the cattle sale, other than the checks and corresponding bank statements.

The information at hand raises questions and casts doubt on the respondents' claims about this transaction and whether a cattle sale was ever even contemplated. First, although not clear from Mr. Roberts' initial response, after further inquiry by this Office it became apparent that Mr. Roberts did not own the 68 head of cattle for which Mr. Stipe allegedly paid him the \$67,500.

Second, if the \$67,500 was for the purchase of cattle, it is unclear why Mr. Roberts immediately deposited funds of that exact amount in his campaign. If there was cattle to be purchased, Roberts would have had to pay something to the alleged owner. Yet there is nothing in Roberts' bank records indicating that he paid the alleged true owner of the cattle any portion of the funds he received from Mr. Stipe.

Third, the claim that Mr. Stipe, who states in his response that he owns a ranch with 6000 acres of land and appears from documents produced by him to be an experienced cattle purchaser, would lay out \$67,500 for cattle without first knowing the type of cattle he was purchasing raises questions. Since the value of cattle would normally be determined in part by

³ As explained below, Mr. Lane also: (i) purchased a sculpture from Mr. Roberts, totaling \$3,000; (ii) allegedly purchased a horse trailer for \$20,500 that was a large part of Mr. Roberts' \$35,500 loan to the campaign on March 31, 1998; and (iii) reportedly campaigned for Mr. Roberts.

the type of cattle, it is unclear how the parties even reached an agreement about the price. The information at hand suggests that the amount of funds Stipe gave to Roberts had more to do with the amount needed for a specific media purchase than with the value of cattle.

Fourth, the repayment of the funds to Mr. Stipe, on September 23, 1998, came on the heels of widespread media reports raising questions about how Mr. Roberts, who had very limited income and assets according to his EIGA statement,⁴ was able to come up with \$67,500 in personal funds to loan to his campaign. See FGCR at pages 6-7. This suggests that the repayment to Stipe was made to eliminate or downplay concerns about Roberts' campaign fundraising tactics.⁵

Fifth, Mr. Roberts and Mr. Stipe assert that they do not have *any* documents related to the cattle purchase, other than the \$67,500 check and corresponding bank records. Mr. Roberts states that there "were and are no written agreements, contracts, bills of sale [or] invoices[.]" Attachment 1 at page 15. Mr. Stipe also only produced a copy of the \$67,500 check and bank statements, and has claimed to have produced all responsive documents. In sum, the complete lack of documentation in support of this substantial transaction, and the other points discussed above, raise doubts about whether there was a bona fide cattle purchase or whether this was simply an effort to secretly fund Mr. Roberts' congressional campaign.

(ii) **Alleged Art Auction**

Walt Roberts, who owns an auction house in McAlester, Oklahoma, allegedly held an art auction on September 11, 1998. Attachment 1 at page 5. The event appears to have been held

⁴ An "EIGA statement" is a "Ethics in Government Act" statement.

⁵ As explained below, the \$67,500 was paid back with funds raised through an alleged art auction, an event which also raises questions.

at the Ramada Inn in McAlester, Oklahoma. *Id.* at page 27. The asserted purpose of the auction was to sell art sculptures created by Mr. Roberts. Questions are raised about the approximately \$150,000 Roberts raised through the alleged auction, at least \$77,000 of which was used for the campaign.

Roberts' response includes a list of the persons invited to the auction. Attachment 1 at pages 28-32. Of the 146 persons on that list, 112 contributed to Walt Roberts for Congress (either before or after the auction). See attachment 4 at pages 3-7. A total of 28 persons are listed on the "buyer registration" form, and thus were in attendance. Attachment 1 at pages 45-47.

The Committee's treasurer, Chris Clark, is listed on the buyer registration form for the alleged auction. Attachment 1 at page 46. According to the Roberts' campaign, one of the Committee staff members, Deanna Coxsey, attended the auction and registered the prospective bidders. Attachment 2 at page 9. The copy of the invitation which Walt Roberts provided to this Office contains limited information about the art to be sold. See Attachment 1 at page 27. The documents produced also include a "Sale List" describing the sculptures. *Id.* at pages 33-35. The language of the Sale List suggests that it was distributed at the event rather than with the invitation, e.g., "This piece is on display tonight." *Id.* at 34. The Sale List indicates that Roberts had previously sold sculptures.

The documents produced indicate that 18 persons gave funds totaling \$148,175 in connection with the event. Attachment 1 at pages 52-55. The 18 persons purportedly paid Roberts for 26 pieces of art. Attachment 4 at page 1. Of those 18 persons, a total of 12 made contributions to the Roberts campaign. Eight of the purchasers spent a total of between \$10,000 and \$24,000 on the sculptures. Attachment 4 at page 1. The most expensive pieces sold for

between \$10,000 and \$16,000. The documents produced suggest that the purchasers did not receive their sculptures at the auction, but had to wait 10 to 12 weeks for the art to be cast.

Attachment 1 at page 35.

Most of the \$148,175 in proceeds from the art auction was placed in Roberts' auction house account on September 15-18, 1998. Attachment 1 at page 52, 53 and 58.⁶ Roberts used the proceeds from the auction to refund \$67,500 to Mr. Stipe on September 23, 1998. Attachment 1 at page 26. Roberts also used \$10,000 of the proceeds for a loan to his Committee on September 22, 1998. Attachment 1 at page 58. Another \$21,238 was used in September of 1998 to pay for bronzing the sculptures or otherwise preparing them for delivery to the purchasers. Attachment 1 at pages 73-74. The respondent produced documents indicating that he had paid sales tax of \$10,862 in connection with the auction. Attachment 1 at page 55.⁷

In sum, at least \$77,500 of the proceeds from the art auction were used by Roberts for his campaign: \$67,500 was used to repay Mr. Stipe for the alleged cattle and \$10,000 was loaned to the Committee.

In response to Subpoena questions, this Office discovered that, although Mr. Stipe claims not to have attended the September 11 event, he claims to have had a financial interest in the sale of Roberts' sculptures. Specifically, Mr. Stipe avers that he had an "Option Contract" ("contract") with Walt Roberts that is related to his sculptures. Attachment 1 at pages 37-41.

⁶ One additional purchaser, Bill Watkins from Arizona, made a payment on November 18, 1998. Attachment 1 at page 54.

⁷ It is unclear what Mr. Roberts did with the remainder of the funds received from the auction, totaling approximately \$39,000. According to a page of Roberts' 1998 auction house bank statement, by October 30, 1998, only \$4,850 was in the account. Attachment 1 at page 59. Because we do not yet have all pages of Roberts' bank statement, it is unclear when and how the

The contract relates to artwork created and to be created by Mr. Roberts. The contract, a four page, hand-written document, gives Mr. Stipe a one-half interest in Roberts' artwork then in existence and to all art created over the ten year period beginning when he exercises the option. Attachment 1 at pages 37-38. The contract requires Stipe to pay Roberts \$1,000 upon execution, and provides that once Stipe exercises the option, he would pay Roberts \$350,000 over a ten year period in installments of at least \$35,000 per year. Attachment 1 at pages 37-38. According to the contract, all payments made pursuant to the option are fully tax deductible to Stipe and fully taxable income to Roberts. Attachment 1 at page 40. The contract was purportedly executed on December 12, 1997.⁸ On August 19, 1998, Stipe made a \$70,000 payment to Roberts.⁹ Stipe avers that this payment was per the option contract, specifically for the years 1997 and 1998. (As discussed below at section vi, most of the \$70,000 appears to have been used for a media purchase paid for on the same day that the \$70,000 was received.)

Many questions are raised about whether the event was a bona fide auction or a fundraising event for the campaign. It is unclear whether this was actually a bona fide auction, whether Roberts had previously sold his own art, and if so, for what amounts. Questions are also raised about whether the option contract with Mr. Stipe was a bona fide financial transaction or was simply created as a means of financing Mr. Roberts' Congressional campaign. As noted,

remainder of the funds were spent. Accordingly, as discussed below, this Office recommends subpoenaing all pages of Roberts' bank statements.

⁸ Roberts' attorney in this matter, G. Michael Blessington, apparently created this hand-written option contract. Mr. Blessington also attended the art auction, purchased a single sculpture for \$10,000 and appears to have purchased art on behalf of another purchaser of sculptures, Tom Summers, who spent \$15,750.

⁹ Stipe's ledger and sworn response state that the \$70,000 check was issued on August 31, 1998, but the check and bank transfer statement indicate that it was provided on August 19, 1998. Attachment 1 at page 56, Attachment 3 at pages 2, 21, and 23.

most of the people invited to the auction were contributors to the Roberts Committee, and most who purchased the art also contributed. One campaign staff member assisted in the auction, and the treasurer was in attendance, suggesting this may have been a campaign event. It is currently unclear whether those invited were informed that the auction was a way to provide financial support for Roberts. It is also unknown whether Mr. Roberts' artwork was of the quality that could command up to \$16,000 for a single piece or whether the prices reflect a desire to skirt the contribution limits.

Regarding the option contract, although the respondents assert that the hand-written document was executed on or about December, 12, 1997, Roberts has yet to adhere to this Office's request for some contemporaneous documentation, e.g., copy of the check or bank statement showing whether/when the \$1,000 payment that was required upon execution, was made. Additionally, there is nothing produced showing that Mr. Stipe received 50% of the proceeds from the auction, which he appears to have been entitled to under the option contract. Attachment 1 at pages 38-39. And although the contract requires that notice of intent to exercise the option "must be in writing" it was, according to counsel, only given verbally. Attachment 1 at page 39. The foregoing raises questions and casts doubts about these transactions.

(iii) "Candidate" Loans of \$35,500 and \$17,000

The First General Counsel's Report, dated Sept, 23, 1999 ("FGCR") raised questions about candidate loans of \$35,500 reportedly made from "personal funds" on March 31, 1998. See FGCR at page 18. The Commission's Subpoenas and Orders inquired as to the source of that loan, as well as a \$17,000 candidate loan made on August 17, 1998. The responses from Roberts have been conflicting and unsatisfactory.

The \$35,500 loan was made to the Committee by check dated March 31, 1998. In his initial sworn response to questions about the \$35,500 loan, Roberts stated that \$10,000 was derived from the sale of a horse trailer to Larry Yates, \$6,500 was derived from horses sold to: (i) "people from Arizona and I do not recall their names" and to (ii) "Harold Wall." Attachment 1 at page 11. A harness was sold for \$1,500 and horse equipment for approximately \$1,000, but the purchasers were not identified. The responses states that the "rest was from the sale of art work and part of cash I had on hand." *Id.* The response stated that Jim Smart bought the art work, but did not state how much he paid for it. *Id.*

After repeated inquiries for documentation and further information about these transactions, Roberts made somewhat different assertions about the source of the \$35,500 loan. He now claims that \$20,500 was for the sale of a trailer and \$15,000 was for the sale of sculptures. Attachment 1 at pages 16, 20, 67-70.

Roberts produced a copy of a check totaling \$20,500 from Jim Lane, dated March 29, 1998. Attachment 1 at page 67. Mr. Lane is the person, mentioned above, who allegedly inspected the cattle on behalf of Mr. Stipe, who is also a former state legislator and close friend of Mr. Stipe. In the initial sworn response, Mr. Roberts never indicated that any of the \$35,500 came from Mr. Lane. See Attachment 1 at page 11. Rather, he claimed that "Larry Yates bought the horse trailer" and that the price was "\$10,000. Roberts asserts that no documents related to the sale exist except for the \$20,500 check which he produced and the corresponding deposit slip and bank statement. Attachment 1 at pages 67 and 70. In response to an inquiry about documents related to the trailer within Mr. Roberts' possession or control that would be kept for tax purposes, counsel verbally stated that he does not believe that there was any capital gain on

the sale of the trailer. Counsel also indicated verbally that Mr. Lane has no documents related to the sale of the \$20,500 trailer.

The other \$15,000 of the \$35,500 came from Jim Smart. In March of 1998, Mr. Smart issued two checks, of \$7,500 each, one from his personal account and one on his business account (J6S Ranch). Attachment 1 at pages 68-69. Roberts contends that these payments were for the sale of artwork.¹⁰ Although this art was apparently sold by or through Roberts' auction company, Mr. Roberts has stated that he does not have any documents relating to these transactions, e.g., invoices, records of sales tax. Counsel also verbally stated that Mr. Smart has no documents.

The Roberts campaign received a \$17,000 loan from the candidate on August 17, 1998. Attachment 1 at page 66. The \$17,000 was provided to Mr. Roberts by the Stipe Law Firm by check dated August 17, 1998. *Id.* at page 62. Roberts claims that the \$17,000 was for consulting services he provided to the Stipe Law Firm. Attachment 1 at pages 16 and 21. In response to additional inquiries Roberts stated "there are no documents relating to the \$17,000 payment" other than those already discussed. Attachment 1 at page 20. Roberts claims that the funds were for public relations and advertising assistance he had given the Stipe Law Firm, e.g., promotions at his auctions, and radio and television advertising. *Id.* at page 21. Counsel has verbally claimed that Roberts does not have any documents related to Roberts' advertising and promotions. The candidate's 1998 EIGA statement indicates that he had provided "consulting services" to the Stipe Law Firm in the prior two years, and that he had received in excess of \$5,000 for such services. See FGCR, Attachment 3 at page 5.

¹⁰ This art was allegedly sold to Mr. Smart in March of 1998, not in the context of the September 11th auction event. It is unclear whether Mr. Roberts created this art work.

Several of the documents produced raise questions about whether the \$17,000 payment may have been made in response to the needs of the Roberts campaign and not a bona fide payment for services. Specifically, the \$17,000 derived from the Stipe Law Firm payment was deposited on August 17, 1998, along with several other checks that totaled just under \$25,000 (\$24,870). Attachment 2 at page 13. On that same day—which was just a few days prior to the primary on August 25—the Roberts campaign wired \$25,000 to the campaign's vendor for a media purchase. *Id.* at page 18. The Roberts' campaign's bank statement shows that just five days earlier the campaign had only about \$6,000 in funds, so without the \$25,000 deposit it could not pay for the advertising. Attachment 2 at page 12. Additionally, two of the checks that were deposited with the \$17,000 were contributions purportedly from Stipe Law Firm employees, which, as discussed below, Gene Stipe has admitted were reimbursed with his cash.¹¹ Attachment 2 at page 13. One inference that could be made regarding the above is that Roberts and Stipe, in need of a means to finance advertising just prior to the August 25th primary, gathered funds from wherever they could—in this case, the Stipe Law Firm. While the limited information at hand does not rule out that the \$17,000 was for bona fide advertising services, it does cast some doubt upon Roberts' claim.

(iv) Reimbursed Stipe Law Firm Staff Contributions

In preparing the FGCR, this Office observed on Roberts' disclosure reports that eight support staff members of the Stipe Law Firm had made sizable contributions to the Roberts Committee, specifically: Ginger Barnes (\$500), Jamie Benson (\$1,990), Shelly Dusenberry (\$1,250), Gloria Ervin (\$1,970), Cynthia Montgomery (\$1,970), Dana Thetford (\$1,950),

¹¹ The two contributions which were admittedly reimbursed and included with the \$17,000 deposit were from Cynthia Montgomery (\$970) and Gloria Ervin (\$980).

Deborah Turner (\$950) and Charlene Spears (\$1,950). As noted above, the Commission found reason to believe that these individual conduits violated Section 441f, and that Gene Stipe, the Stipe Law Firm, Walt Roberts, the Roberts Committee and its treasurer knowingly and willfully violated Section 441f.

Gene Stipe acknowledges that cash belonging to him was used to reimburse five of the eight Stipe Law Firm staff members: Benson, Ervin, Montgomery, Turner and Spears.

Attachment 3 at page 8. Their contributions total \$8,830. Mr. Stipe avers that "Charlene Spears, my assistant, has access on a regular basis to cash belonging to me. At one point during 1998, I told her to use some of this cash to 'help elect some Democrats', or words to that effect."

Attachment 3 at page 7. Mr. Stipe states that "he did not authorize or approve these specific payments," and that he "did not speak to anyone in 1998 about paying or reimbursing these specific contributors." Attachment 3 at page 8.

In response to this Office's inquiries about any documents related to the cash payments, e.g., a petty cash ledger, bank withdrawals, etc., Mr. Stipe claims that the funds in question were derived from his paychecks from the State of Oklahoma and his Social Security checks.

Attachment 3 at page 13. Stipe claims that during 1998 he cashed these checks and provided the cash to Ms. Spears "to pay various personal expenses." *Id.* He claims not to have retained any receipts or other documents relating to the cashing of the checks. He thus avers that "[t]o the best of my knowledge no such documents exist." Attachment 3 at page 14.

Charlene Spears submitted an unsworn response asserting that, as the personal secretary to Gene Stipe for over twenty years, she has "unlimited access to money of Gene Stipe to pay any and all of his personal and business obligations without any specific direction by Gene Stipe other than a general instruction to pay what is owed and do it timely." Attachment 6 at page 1.

Spears claims that at some point prior to when the contributions in question were made, she "pointed out" to Stipe that there was "some extra money in his accounts." Attachment 6 at page 1. She also asserts that Stipe told her to use the money to "help elect some democratic candidates." *Id.* Spears acknowledges using the money to pay Ervin, Turner, Benson and Montgomery and herself for contributions to Roberts, though, she contends, she did not clear the idea with anyone. *Id.* Spears admits she knew the procedure "was not proper" but that she "did not know it violated a specific statute." *Id.* Ervin, Turner, Benson and Montgomery have all acknowledged receiving cash in exchange for their contributions while Barnes, Thetford and Dusenberry have denied it. Attachment 6 at pages 3-9.

Spears and the other four conduits have produced copies of their bank statements covering the period just before and after the time that they issued checks to the Roberts campaign.¹² These bank statements suggest that cash was received by these individuals in exchange for their contributions to the Roberts campaign. The three other Stipe Law Firm staff members who claimed to not have been reimbursed (Barnes, Dusenberry and Thetford) have produced copies of their bank records. These records appear to substantiate their claims that they made the contributions without receiving any reimbursements.

In his sworn response, Walt Roberts states that he "had no involvement in any aspect of any of those [five reimbursed] contributions." Attachment 1 at page 12. The Roberts Committee's response indicates that a staff member named Annie Prather deposited the reimbursed contributions into the Roberts Committee's account. Attachment 2 at page 10. The

¹² These documents, along with numerous other pages of documents produced by the other respondents in these matters, have not been attached but are available for review in the Central Enforcement Docket.

Roberts Committee states that “[n]o one with the Committee was aware of any compensation or gifts to the persons in connection with their contributions.” Attachment 2 at page 10.

Questions are raised about this reimbursement scheme. In his initial statement, Stipe stated Spears had access to cash belonging to him. In her response, Ms. Spears specifically indicated that the funds were derived from “some extra money in [Senator Stipe’s] accounts.” Attachment 6 at page 1. After this Office sought some documentation related to the cash payments, i.e., a petty cash type ledger or account statement, Stipe then asserted that the funds were derived from checks that were cashed, i.e., not from an account. The tension between these two explanations of the actual source of the reimbursements raises questions. In addition, as discussed above, two of the reimbursed checks were deposited simultaneously with the \$17,000 from Stipe, permitting Roberts to raise \$25,000 to fund a specific media purchase. See Attachment 2 at page 13.

Questions are also raised about the roles of Charlene Spears and Senator Stipe within the Roberts campaign. A document produced by Roberts’ media consultant states that Ms. Spears was a “key figure” in the campaign, a strategic memoranda from a media consultant was addressed to “Walt, Senator Stipe, Charlene” and to two others. Attachment 7 at pages 1-2. One news article indicates that the person whose duty it was to act as Stipe’s personal appointment planner was assigned “to do the same” for Roberts during his campaign. Attachment 7 at page 5. Given that Spears appears to be Stipe’s closest and long-time assistant, it appears likely that the article was referring to her. In addition, according to notes take by a RAD analyst, someone named “Charlene” who identified herself as a volunteer with the Roberts campaign and refused to give her last name, called more than once in an attempt to correct

problems with disclosure reports. Attachment 7 at page 6. The foregoing suggests that Ms. Spears' role within the Roberts campaign should be explored.

The documents produced indicate that Mr. Stipe also played a key role in the Roberts campaign. One strategy memo from the vendor was addressed: "Senator Stipe and Walt." Attachment 7 at page 3. Another memo discussing funds needed for media buy in August is addressed only to "Senator Stipe." *Id.* at page 4. Another document, produced by Roberts' consultant Strother, Duffy & Strother, contains feedback on a letter Stipe had proposed sending, advising Stipe to be careful how widely his letter is circulated "so as not to play into the perception that you are Walt's puppeteer." *Id.* at page 7. A news article reports that Stipe is Roberts' chief strategist and fund-raiser, and that Stipe's office in McAlester was the "nerve center" for the campaign. *Id.* at page 5. In sum, the information at hand suggests that Stipe and Spears were key players within Roberts campaign, suggesting that they may have been together with Mr. Roberts behind or aware of this reimbursement scheme as well as many of the other questionable transactions discussed in this Report.

As part of its investigation into these activities, this Office also subpoenaed the Stipe Law Firm. The discovery sought information about whether the firm had been involved in making any reimbursements—either to the eight support staff conduits discussed above or to any other law firm employees. The Stipe Law Firm's managing partner, Ed Harper, avers that to the best of his knowledge, information or belief, the Stipe Law Firm itself has never provided reimbursements in connection with any federal election. Attachment 3 at page 17. This Office has reviewed the responsive documents—including all those related to any payments that were

not salary, e.g., bonuses, expense reimbursements. Our review of those documents does not reveal any payments by the firm to its staff that appear to be reimbursements for contributions.¹³

(v) Mr. Stipe's Financial Support for Walt Roberts

In response to an interrogatory seeking information about all payments that Mr. Stipe made to Walt Roberts, Mr. Stipe admitted that during 1998 he made numerous payments for Roberts' personal and business expenses. Attachment 3 at pages 2-4. In his initial response, Stipe claimed that the payments totaled \$16,771.64. *Id.* at page 4. After a request for documentation showing such payments, Stipe produced additional documents showing that the payments totaled almost \$38,000. See Attachment 4 at pages 10-11. The payments were for a wide variety of expenses, including bank loans/mortgage payments, taxes, gas, cable bills, membership dues, medical care, telephone, flowers and credit card payments. Mr. Stipe states that he requested that Ms. Spears issue these various checks to the vendors.

Stipe avers that the payment of Roberts' personal expenses is part of a long-standing pattern of giving or loaning between Stipe and Roberts. Attachment 3 at pages 4 and 24. Upon request from this Office, Stipe produced documents showing payments made by Stipe to Roberts of \$550 in 1984 and \$3,750 in 1988. Attachment 4 at page 8. Stipe claims that these payments were for school tuition. Stipe also produced documents showing that Stipe's State Senate campaign paid Roberts \$16,015 in 1996 for services rendered to that campaign. Attachment 4 at

¹³ Mr. Stipe, Ms. Spears and the four reimbursed contributors have requested pre-probable cause conciliation, but have asked that such requests be held in abeyance pending investigation.

page 8. Documents produced also show that Stipe gave or loaned Roberts another \$107,430 during 1999 and 2000. See Attachment 4 at pages 8-9.

Mr. Stipe's payment of this substantial portion of Mr. Roberts' personal and business expenses during an election year raises questions. The payments Stipe made to Roberts are substantial, especially given that Roberts' EIGA statement indicates that his total 1998 earned income through July of 1998 was \$17,251 and his total earned income for 1997 was \$59,362.

The Commission has stated that funds provided to a candidate that are to be used solely for personal living expenses and subsistence of the candidate are "contributions" if the funds are not "personal funds" under Commission regulation 11 C.F.R. § 110.10. See Advisory Opinion 1982-64, 1978-40; see also 1999-1. "Personal funds" of the candidate include funds from various sources, including: "gifts of a personal nature which had been customarily received prior to candidacy." 11 C.F.R. § 110.10.

Although it appears that Mr. Stipe had provided money to Roberts ten years prior to the 1998 election, there is no evidence that Stipe had given Roberts gifts of funds (or paid Roberts' expenses) in the years just preceding the 1998 election, e.g., 1995-97. The payments in 1996 were from Stipe's campaign, purportedly for services, and were not gifts. While Stipe made substantial payments to Roberts during 1999 and 2000, some are for art bronzing. Some of the largest payments, totaling about \$53,000, are labeled "loans," and it is unclear whether they were business or personal loans. Some of the documents also suggest that some of the funds were related to business ventures between Stipe and Roberts, i.e., the auction house in which Mr. Stipe had invested heavily. Moreover, the largest of the payments for 1999 and 2000 were made after notice of the reason-to-believe findings in this matter were received. Further discovery is

necessary to determine the purpose of many of these payments and the extent to which Mr. Stipe had a history of giving such gifts to Mr. Roberts.

(vi) \$55,000 media payment

Additional information has come to light about Roberts' spending that raises serious questions. On August 19, 1998, the same day that Mr. Roberts received the \$70,000 from Mr. Stipe pursuant to the "Option Contract," \$55,000 was wired from Roberts' Auction House account. Attachment 1 at pages 36, 56 and 71. The \$70,000 payment made to Roberts was on a bank check, thus permitting Roberts to wire the \$55,000 out the same day as receipt. Attachment 3 at page 23. Although information about this payment was not specifically covered by the Subpoena, this Office asked counsel if he could explain the purpose of this large payment made on the same date the \$70,000 was received. Counsel informed this Office by telephone that the \$55,000 payment was used to pay for a campaign media expense. Counsel has stated that he would provide documentation regarding the expenditure of the \$55,000. Despite several requests, however, such documents were not produced.

The Act requires that all disbursements made by a political committee (other than petty cash disbursements) be made by check drawn on the committee's designated account. 2 U.S.C. § 432(h)(2). The information at hand indicates that the candidate paid for a \$55,000 media purchase from his auction company account rather than his designated campaign account. Accordingly, this Office recommends that the Commission find reason to believe that Walt Roberts for Congress and Chris Clark, as treasurer, violated 2 U.S.C. § 432(h). In addition, given the candidate had control over the funds in question and they came from his account, this

Office also recommends that the Commission find reason to believe that Walt Roberts violated 2 U.S.C. § 432(h).¹⁴

This new information also raises serious questions about the bona fides of the \$70,000 payment and the option contract in general, and is further evidence of the wide pattern of secretive transactions designed to finance Roberts' Congressional elections. Accordingly, this Office intends to investigate this transaction through further discovery.

B. MUR 4933—Loan from McAlester Industrial

The FGCR also addressed a \$50,000 corporate loan accepted by the Roberts campaign that the campaign claimed came from the candidate.

Disclosure reports indicate that Walt Roberts made the \$50,000 loan to the Roberts campaign on September 1, 1998. The funds appear to have been used for media purchases in the days just prior to the runoff election on September 15, 1998. See FGCR at pages 18-20. After an inquiry from RAD, the Roberts campaign acknowledged that the loan came from McAlester Industrial Credit Corporation ("McAlester"). The loan was secured with a second mortgage on Roberts' auction house (property in which Gene Stipe had an interest). The McAlester loan required Roberts to make two installments of \$25,000-- one on March 31, 1999, with interest of \$2,750, and the remainder on August 31, 1999 with interest of \$1,375. Attachment 5 at page 14. After RAD ascertained that the loan was from a corporation and warned Roberts that it was prohibited, in March of 1999, Roberts borrowed \$50,000 from a qualified lending institution, and

¹⁴ Given the limited information at hand regarding this transaction, this Office does not recommend that the Commission find that the Section 432(h) violation was knowing and willful.

If the \$55,000 payment was a campaign expense, it would also be a violation of Section 434(b) because the expenditure was not reported. However, as the Commission has already made Section 434(b) findings in this matter, no new recommendations are necessary.

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repaid McAlester the \$50,000 in April, 1999. However, according to the documents produced by McAlester/Layden, it does not appear that any interest was paid by Roberts. Attachment 5 at page 21.

Discovery has confirmed that McAlester is an incorporated entity—and therefore not permitted to make contributions, including loans, in connection with any federal election. Discovery has also confirmed that McAlester is in the process of dissolution; its capital and cash reserve from August through October, 1998 was only \$1,329. Attachment 5 at pages 5-6. In fact, McAlester's President, W.H. Layden, avers that he obtained the \$50,000 from another source—Francis Stipe, who is reportedly a publisher and a friend and business associate of Layden.¹⁵ Attachment 5 at pages 3, 4, 17 and 25. Layden explained that he obtained the \$50,000 from Francis Stipe in return for a promissory note for that amount, plus interest. That note required McAlester to pay interest of "7% from date." *Id.* at page 4. Documents produced indicate that McAlester/Layden repaid Francis Stipe the \$50,000, along with interest of \$41.58, in April of 1999. *Id.* at 29-30.

Layden avers that there was no written application for the loan to Roberts, that Roberts did not provide a financial statement and that there are no documents related to the loan, other than the checks, deposits slips and the note. Attachment 1 at page 19. In response to an interrogatory asking if there was any discussion that the \$50,000 was to be used in the Roberts campaign, Layden answered "no." *Id.* at page 7. He also asserts that no other person recommended that McAlester loan the funds to Roberts. *Id.* at page 19. Gene Stipe states that

¹⁵ It is currently unclear what familial relationship might exist between Francis and Gene Stipe.

he did not "arrange, suggest or recommend" that McAlester be the source of the loan to Roberts. Attachment 3 at page 10.

The foregoing raises a number of questions, including whether the parties involved were aware that the funds were to be used in the campaign, who was involved in arranging the loan and whether this loan was made by McAlester using its usual practices and procedures. Numerous questions are also raised about Francis Stipe's involvement and knowledge about the purpose of the loan and whether the funds actually belonged to Francis Stipe.

IV. SUMMARY

The information produced in response to the Commission's Subpoenas and Orders raises numerous questions about the transactions at issue. Specifically, questions are raised about: (1) the \$67,500 loan from Stipe, allegedly obtained through Roberts' sale of cattle which he admits he did not own and for which there is no documentation, that was immediately used for a campaign media purchase for that precise amount; (2) an alleged art auction through which Roberts raised \$148,175 by selling 26 sculptures to 18 persons, most of whom were campaign contributors, for as much as \$16,000 each; (3) a \$35,500 loan, allegedly derived from the sale of art and a horse trailer for which there is no documentation other than the written instruments themselves; (4) a \$17,000 candidate loan derived from a check from the Stipe Law Firm, claimed to be for advertising as to which Roberts asserts he has no documentation (other than the check and tax record); (5) a reimbursement scheme for contributions to the Roberts campaign, totaling \$8,830, from cash belonging to Gene Stipe; (6) new information indicating that Gene Stipe gave Walt Roberts almost \$38,000 during the 1998 campaign year, with serious questions regarding Stipe's contention that there was an ongoing gift-giving relationship; (7) new information indicating that Roberts wired \$55,000 from his auction company account for a campaign

purchase, that went unreported, and which was financed with a \$70,000 bank check from Gene Stipe claimed to be made pursuant to a hand-written "Option Contract" between Stipe and Roberts; (8) new information indicating that the \$50,000 loan from McAlester Industrial Credit Corp., which the Roberts campaign received in September, 1998, was actually funded by Francis Stipe, whose relationship to Gene Stipe is currently unknown.

The foregoing strongly suggests a pattern of activities designed to deliberately evade the Act's contribution limitations and prohibitions and raises serious questions about the bona fides of these transactions. In light of the foregoing, as discussed below, additional discovery is recommended. In addition, findings of Section 432(h) violations are recommended regarding the \$55,000 payment that was not made from Roberts campaign account.

V. DISCUSSION OF PROPOSED DISCOVERY

To investigate the myriad of issues raised in this matter, this Office will undertake both formal and informal discovery.

Depositions are recommended for those persons who played central roles in one or both of these matters, specifically: Walt Roberts, Gene Stipe, Charlene Spears, William H. Layden and Francis Stipe. As discussed above, the response to the initial round of Subpoenas suggest new and more extensive violations and discloses additional fact patterns. In addition, there are many instances in which minimal documents have been produced in support of alleged transactions. To conduct the most effective depositions, this Office should have these critical documents. Accordingly, it is necessary to send out a fairly extensive second round of Subpoenas for documents to Walt Roberts/Walt Roberts Auction House, Gene Stipe and the

Stipe Law Firm.¹⁶ The Subpoenas call for the production of various documents, including any which the Stipe Law Firm and Roberts possess related to the \$17,000 in services Roberts allegedly provided to the firm and any other payments the Stipe Law Firm made to Roberts for the years 1996-99, documents related to the ownership of the horse trailer by Walt Roberts, documents related to Walt Roberts sale of any sculptures during 1996-99, Walt Roberts' auction house customer lists and Roberts' financial and tax documents from 1996-98 and Stipe's tax records for 1998 (the year the \$70,000 was to be tax deductible). Because the second round of document subpoenas is fairly extensive, respondents will likely request additional time to respond, thereby delaying scheduling depositions. Accordingly, this Office anticipates that prior to receiving responses from and deposing the principal respondents, Walt Roberts and Gene Stipe, this Office will depose other respondents and witnesses.

It is critical to the investigation that this Office review all bank statements for the accounts of Walt Roberts/Walt Roberts' Auction House and the Roberts Committee from the period beginning December, 1997 and ending December 31, 1998. This Office has thus far experienced difficulties in obtaining documents from Mr. Roberts and the Roberts campaign, i.e., only after repeated requests have documents been produced and then only in a piecemeal fashion over a three month period. Therefore, regarding the Roberts Committee, this Office recommends sending a subpoena directly to its bank: First National Bank and Trust Company. Regarding the bank statements sought from Mr. Roberts for the account of Walt Roberts d/b/a Walt Roberts

¹⁶ Roberts' bank statements indicate that Walt Roberts Auction House is a "d/b/a," suggesting that the business is a sole proprietorship. A search of Dunn and Bradstreet did not disclose any corporation of that name. Therefore, this Office will send the Subpoena to Walt Roberts and Walt Roberts d/b/a Walt Roberts Auction House. However, in the event that respondents inform us that the Walt Roberts Auction House is a separate legal entity, this Office requests that the Commission approve a subpoena to it at this time.

Auction Company, this Office will first attempt to obtain them from Mr. Roberts directly through the subpoena recommended for him. However, in case Mr. Roberts does not timely cooperate or produce all the required documents, this Office recommends that the Commission also approve the attached Subpoena seeking those bank records from his bank: The Bank, N.A.¹⁷

This Office will attempt to interview many of the numerous persons invited to the auction and some of those who attended the auction and purchased art. With respect to several of the purchasers of Roberts' sculptures who spent substantial amounts (in excess of \$10,000), this Office recommends that their statements be taken under oath. Included in this group are: Alvon Crosslin, Louise Crosslin, Howard McClanahan, Larry Oliver, Terry Nix, Christi Nix, Tom Summers, Jim Smart and Bill Watkins.¹⁸ It is anticipated that the depositions of the purchasers of art will be short in duration, focusing mainly on the auction and the relationships of the deponent to Roberts, Stipe and the Roberts campaign. This Office also recommends

¹⁷ The Right to Financial Privacy Act ("RFPA") requires that certain procedures be complied with before financial records may be obtained from "customers" of financial institutions. See 12 U.S.C. § 3401-22. The RFPA defines "customers" to include individuals and partnerships of up to four individuals. 12 U.S.C. § 3401(4) and (5). Because the Roberts Committee is neither an individual nor a partnership entity of less than five individuals, it does not meet the definition of "customer" as defined by RFPA. Thus, it is not necessary for the Commission to notify the Roberts Committee with regard to the subpoena to be issued to its bank. See, e.g., *Ridgeley v. Merchants State Bank*, 699 F. Supp. 100 (N.D. Tex. 1988). However, the RFPA applies to the bank records of sole proprietorships. See *United States v. Frazin*, 780 F.2d 1461, 1465, fn. 1 (9th Cir. 1986), citing *Hunt v. Securities and Exchange Commission*, 520 F. Supp. 580, 604 (N.D. Texas 1981). As Mr. Roberts' bank account appears to be that of a sole proprietorship, in the event that this Office must send the Subpoena to Mr. Roberts, this Office will first send notice informing him of his right to judicially contest the production of the records pursuant to the RFPA.

¹⁸ Messrs. Smart and Watkins did not attend the auction but allegedly purchased sculptures or other forms of art from Walt Roberts. The RFPA does not apply to the bank records of the Roberts Committee.

¹⁸ Messrs. Smart and Watkins did not attend the auction but allegedly purchased sculptures or other forms of art from Walt Roberts.

deposing Jim Lane, who paid \$3,000 for art at the auction, allegedly inspected the 68 cattle, purchased the \$20,500 trailer from Roberts in March of 1998 and who was also reportedly involved in the campaign. These subpoenas also require the production of documents.

This Office further recommends deposing several Roberts' staff members who would appear to have information about these various transactions, including campaign staff member Deanna Coxsey (who was present at the auction to assist Roberts), Annie Prather (who, among other things, accepted and deposited the reimbursed contributions) and treasurer Chris Clark. These subpoenas also require the production of documents.

Counsel for the four individual conduits whose contributions were reimbursed with cash belonging to Mr. Stipe--Benson, Ervin, Montgomery, Turner--has stated that his clients wish to cooperate with the Commission's investigation. Accordingly, this Office will attempt to informally interview those conduits to ascertain information about the mechanics of the reimbursements and what they were told by Ms. Spears or others.

VI. RECOMMENDATIONS

1. Find reason to believe that Walt Roberts for Congress, Chris Clark, as treasurer and Walt Roberts violated 2 U.S.C. § 432(h).
2. Approve the attached factual and legal analysis.
3. Approve the attached subpoenas for depositions to Walt Roberts, Gene Stipe and William H. Layden.
4. Approve the attached subpoenas for depositions and documents to Charlene Spears, Francis Stipe, Chris Clark, Alvon Crosslin, Louise Crosslin, Jim E. Lane, Howard McClanahan, Larry Oliver, Terry Nix, Christi Nix, Tom Summers, Bill Watkins, Jim Smart, Annie Prather and Deanna Coxsey.
5. Approve the attached subpoenas for documents to Walt Roberts and Walt Roberts d/b/a Walt Roberts Auction Company, Walt Roberts Auction Company, Gene Stipe, the Stipe Law Firm, the First National Bank and Trust Company and The Bank, N.A.

6. Approve the appropriate letters.

Lawrence M. Noble
General Counsel

Date

4/14/00

BY:

Lois G. Lerner
Associate General Counsel

Staff assigned: Xavier K. McDonnell
Margaret J. Toalson

Attachments:

1. Roberts' responses
2. Roberts Committee's responses
3. Gene Stipe and Stipe Law Firm responses
4. Charts
5. McAlester/Layden Responses
6. Conduit responses
7. Miscellaneous documents
8. Subpoenas
9. Factual and Legal Analysis